

§ 28A-13-3. Powers of a personal representative or fiduciary.

(a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including the powers specified in the following subdivisions:

- (1) To take possession, custody or control of the personal property of the decedent. If in the opinion of the personal representative the personal representative's possession, custody or control of such property is not necessary for purposes of administration, such property may be left with or surrendered to the heir or devisee presumptively entitled thereto. The personal representative has the power to take possession, custody or control of the real property of the decedent if the personal representative determines such possession, custody or control is in the best interest of the administration of the estate, including the power to eject occupants of real property. Prior to exercising such power over real property the procedure as set out in subsection G.S. 28A-13-3(c) shall be followed, except with respect to real property that is devised to the personal representative in the decedent's will or title to which is acquired by the personal representative during the estate administration, in which case the personal representative shall be immediately entitled to custody, possession, and control, and may institute an estate proceeding under subsection (d) of this section to enforce those rights. If the personal representative determines that such possession, custody or control is not in the best interest of the administration of the estate such property may be left with or surrendered to the heir or devisee presumptively entitled thereto.
- (2) To retain assets owned by the decedent pending distribution or liquidation even though such assets may include items which are otherwise improper for investment of trust funds.
- (3) To receive assets from other fiduciaries or other sources.
- (3a) To obtain the decedent's digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets.
- (4) To complete performance of contracts entered into by the decedent that continue as obligations of the decedent's estate, or to refuse to complete such contracts, as the personal representative may determine to be in the best interests of the estate, but such refusal shall not limit any cause of action which might have been maintained against decedent if the decedent had refused to complete such contract. In respect to enforceable contracts by the decedent to convey an interest in land, the provisions of G.S. 28A-17-9 are controlling.
- (5) To deposit, as a fiduciary, funds of the estate in a bank, including a bank operated by the personal representative pursuant to G.S. 53-163.1.
- (6) To make, as a fiduciary, any form of investment allowed by law to the State Treasurer under G.S. 147-69.1, with funds of the estate, when such are not needed to meet debts and expenses immediately payable and are not immediately distributable, including money received from the sale of other

assets; or to enter into other short-term loan arrangements that may be appropriate for use by trustees or beneficiaries generally. Provided, that in addition to the types of investments hereby authorized, deposits in interest-bearing accounts of any credit union authorized to do business in this State, when such deposits are insured in the same manner as required by G.S. 147-69.1 for deposits in a savings and loan association, are hereby authorized.

- (7) To abandon or relinquish all rights in any property when, in the opinion of the personal representative acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in such condition that it is of no benefit to the estate.
- (8) To vote shares of stock or other securities in person or by general or limited proxy, and to execute waivers, consents or objections with respect to such stock or securities.
- (9) To pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.
- (10) To hold shares of stock or other securities in the name of a nominee, without mention of the estate in the instrument representing stock or other securities or in registration records of the issuer thereof; provided, that
 - a. The estate records and all reports or accounts rendered by the personal representative clearly show the ownership of the stock or other securities by the personal representative and the facts regarding its holdings, and
 - b. The nominee shall not have possession of the stock or other securities or access thereto except under the immediate supervision of the personal representative or when such securities are deposited by the personal representative in a clearing corporation as defined in G.S. 25-8-102.

Such personal representative shall be personally liable for any acts or omissions of such nominee in connection with such stock or other securities so held, as if such personal representative had done such acts or been guilty of such omissions.

- (11) To insure, at the expense of the estate, the assets of the estate in the personal representative's possession, custody or control against damage or loss.
- (12) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the personal representative shall deem advisable, including the power of a corporate personal representative to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the estate, and to mortgage, pledge or otherwise encumber such portion of the estate as may be required to secure such loan or loans. In respect to the borrowing of money on the security of the real property of the decedent, G.S. 28A-17-11 is controlling.
- (13) To renew obligations of the decedent for the payment of money.
- (14) To advance the personal representative's own money for the protection of the estate, and for all expenses, losses and liabilities sustained in the administration of the estate or because of the holding or ownership of any estate assets. For such advances, with any interest, the personal representative shall have a lien on the assets of the estate as against a devisee or heir.

- (15) To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the estate.
- (16) To pay taxes, assessments, the personal representative's own compensation, and other expenses incident to the collection, care, administration and protection of the assets of the estate in the personal representative's possession, custody or control.
- (17) To sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.
- (18) To allocate items of income or expense to either estate income or principal, as permitted or provided by law.
- (19) To employ persons, including attorneys, auditors, investment advisors, appraisers or agents to advise or assist the personal representative in the performance of the personal representative's administrative duties.
- (20) To continue any business or venture in which the decedent was engaged at the date of the decedent's death, where such continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the decedent's interest in such business. With respect to the use of the decedent's interest in a continuing partnership, the provisions of G.S. 59-71 and 59-72 qualify this power; and with respect to farming operations engaged in by the decedent at the time of the decedent's death, the provisions of G.S. 28A-13-4 qualify this power.
- (21) To incorporate or participate in the incorporation of any business or venture in which the decedent was engaged at the time of the decedent's death.
- (22) To provide for the exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.
- (23) To maintain actions for the wrongful death of the decedent according to the provisions of Article 18 of this Chapter and to compromise or settle any such claims, whether in litigation or not. Unless all persons who would be entitled to receive any damages recovered under G.S. 28A-18-2(b)(4) are competent adults and have consented in writing, any such settlement shall be subject to the approval of a judge of the court or tribunal exercising jurisdiction over the action or a judge of the district or superior court in cases where no action has previously been filed. If the claim is brought under Article 31 of Chapter 143 of the General Statutes, the settlement is subject to the approval of the Industrial Commission in accordance with that Article. It shall be the duty of the personal representative in distributing the proceeds of such settlement in any instance to take into consideration and to make a fair allocation to those claimants for funeral, burial, hospital and medical expenses which would have been payable from damages which might have been recovered had a wrongful death action gone to judgment in favor of the plaintiff.
- (24) To maintain any appropriate action or proceeding to recover possession of any property of the decedent, or to determine the title thereto; to recover damages for any injury done prior to the death of the decedent to any of the decedent's property; and to recover damages for any injury done subsequent to the death of the decedent to such property.
- (25) To purchase at any public or private sale of any real or personal property belonging to the decedent's estate or securing an obligation of the estate as a

fiduciary for the benefit of the estate when, in the personal representative's opinion, it is necessary to prevent a loss to the estate.

- (26) To sell or lease personal property of the estate in the manner prescribed by the provisions of Article 16 of this Chapter.
- (27) To sell or lease real property of the estate in the manner prescribed by the provisions of Article 17 of this Chapter.
- (28) To enter into agreements with taxing authorities to secure the benefit of the federal marital deduction pursuant to G.S. 28A-22-6.
- (29) To pay or satisfy the debts and claims against the decedent's estate in the order and manner prescribed by Article 19 of this Chapter.
- (30) To distribute any sum recovered for the wrongful death of the decedent according to the provisions of G.S. 28A-18-2; and to distribute all other assets available for distribution according to the provisions of this Chapter or as otherwise lawfully authorized.
- (31) To exercise such additional lawful powers as are conferred upon the personal representative by the will.
- (32) To execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the personal representative.
- (33) Repealed by Session Laws 2009-48, s. 10, effective October 1, 2009, and applicable to renunciations and powers of attorney executed on or after that date.

(a1) Except as qualified by express limitations imposed in a will of the decedent, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative shall have absolute discretion to make the election as to which items of the decedent's personal and household effects shall be excluded from the carry over basis provision of the federal income tax law and such election shall be conclusive and binding on all concerned.

(a2) Subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to renounce in accordance with the provisions of Chapter 31B of the General Statutes.

(b) Repealed by Session Laws 2012-18, s. 3.7, effective June 11, 2012.

(c) Except with respect to real property that is devised to the personal representative in the decedent's will, or title to which is acquired by the personal representative during the estate administration, in which case the personal representative shall be immediately entitled to custody, possession, and control and may institute an estate proceeding under subsection (d) of this section to enforce those rights, prior to the personal representative exercising possession, custody or control over real property of the estate, the personal representative shall petition the clerk of court to obtain an order authorizing such possession, custody or control. The petition shall include:

- (1) A description of the real property which is the subject of the petition;
- (2) The names, ages, and addresses, if known, of the devisees and heirs of the decedent;
- (3) A statement by the personal representative that the personal representative has determined that such possession, custody or control is in the best interest of the administration of the estate.

The devisees and heirs will be made parties to the proceeding by service of summons in the manner prescribed by law. If the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or control, the clerk of court shall grant an order authorizing that power. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-15-1(c), the personal

representative may petition for possession, custody, or control of any real property as a part of that proceeding and is not required to institute a separate special proceeding.

(d) The personal representative has the power to institute a proceeding pursuant to Article 2 of this Chapter to enforce the rights set forth in this section. The clerk of superior court may enter orders necessary to enforce the rights set forth in this section. If the person occupying the real property is a tenant or lessee of the property, the personal representative may seek ejectment of the tenant or lessee only pursuant to the provisions of Article 3 of Chapter 42 of the General Statutes. (1868-9, c. 113, ss. 73, 77; Code, ss. 1501, 1505; Rev., ss. 85, 159; C.S., ss. 170, 171; 1925, c. 86; 1933, cc. 161, 196, 498; 1973, c. 1329, s. 3; 1975, c. 19, s. 9; c. 371, s. 4; 1977, c. 556; 1979, c. 467, s. 21; c. 717, s. 3; 1985, c. 689, s. 8; 1991, c. 460, s. 3; 1995, c. 401, s. 1; 1997-181, s. 22; 2001-413, s. 2; 2002-159, s. 8; 2007-106, s. 1; 2009-48, s. 10; 2011-344, s. 4; 2012-18, s. 3.7; 2016-53, s. 3.)